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verdict for my client, because you would find reasonable doubt in this case.

The prosecution is going to get up -- we get one time -- one chance, one shot. And the prosecution is going to get up because they get two opportunities at this. After that, the Judge is going to instruct you. And I believe, after that is done, I think that your decision will be not guilty for my client. Thank you for your patience and your attentiveness.

MR. POWELL: It's Mr. Durant's position that it's not far-fetched, that someone wearing the exact same thing, that almost look exactly the same as the defendant, gloves were found in his car. He was driving the exact same kind of car. When they searched the car, they found evidence from the robbery. They went back and backtracked the exact route the chase took, found additional evidence, the mask and more bank bags from the robbery. The officers testified that there was no other traffic through the area that night and all of the eyewitness testimony -- now, I never promised anyone to identify him conclusively. I said there were distinctive features, this green scrub shirt. What is the likelihood of two people

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22 night and all of the eyewitness testimony -- now, I
23 never promised anyone to identify him conclusively.
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25 scrub shirt. What is the likelihood of two people

1 the window. He knew he needed to get away from
2 those police, because he had just committed a
3 robbery. This is the evidence that we have before
4 you. Was there a footprint submitted to forensics
5 for some match, no. This is not television. This
6 is real life. Would it have been nice to have had
7 the patrol video? Sure, maybe it would have. Will
8 that raise a question in your mind? I hope so.
9 Reasonable people, it would. But there is a
10 distinction between a what if from a footprint or a
11 what if from a video when you've got all of this
12 other physical evidence.

13 Eyewitness testimony. The police officers who
14 saw him coming out of the business and get in this
15 white jeep. Now, if you decide the points
16 Mr. Durant made were reasonable doubt, you're the
17 jury, you can do that. That's why this system in
18 America is so great. But you've got to ignore all
19 of this physical evidence and accuse those police
20 officers of not telling the truth and committing
21 police misconduct to do that. Members of the jury,
22 common sense just tells you that didn't happen in
23 this case.

24 This man in this green hospital shirt ran out
25 of an Arby's with bank bags in front of a police

1 officer and they caught him. You don't need a
2 bunch of crime scene technology like you see on
3 television to figure out that one. They caught
4 him. This bank bag was in the car. He's guilty.
5 Thank you.

6 THE COURT: Ladies and gentlemen,
7 it's now my duty to explain to you the law that
8 will guide you in your deliberations. We all
9 appreciate how carefully you've been listening and
10 I know you'll continue to do so. I'm going to go
11 slow, because, unfortunately, in the State of
12 Alabama, you're not permitted to have a copy of my
13 charge to take with you to the deliberation room.
14 Now, I disagree with the law in that respect, but I
15 must follow it, and so must you.

16 Now, this case is brought to you by an
17 indictment, which charges Charles Smith with armed
18 robbery of LaKeshia Atkins. I want you to
19 understand from the beginning that the indictment
20 here has no bearing whatsoever on the guilt or the
21 innocence of any person. It's not evidence in the
22 case. It's merely the paperwork or legal process
23 by which a case is presented for trial.

24 Now, as to this charge, the defendant has
25 plead not guilty. A plea of not guilty places the

1 burden on the State of Alabama to prove by the
2 evidence presented, the guilt of defendant beyond a
3 reasonable doubt. So, before a conviction can be
4 had, each of you must be satisfied beyond a
5 reasonable doubt of his guilt. Otherwise, he's
6 entitled to an acquittal.

7 In addition, the defendant is presumed to be
8 innocent. And that presumption attends him until
9 his guilt is established from the evidence beyond a
10 reasonable doubt. This presumption of innocence is
11 evidence in the case and is to be considered by you
12 with all the other evidence. It's a fact which is
13 to be considered by you and goes with you -- goes
14 with the defendant to your verdict unless the
15 evidence convinces you beyond a reasonable doubt of
16 the proof of each and every element of the offense
17 here.

18 Now, we've all mentioned reasonable doubt.
19 It's a relative term. It's not easy to define.
20 But, basically, a reasonable doubt, it's a fair
21 doubt. It's based upon reason and common sense
22 arising from the evidence. In short, it's a doubt
23 for which you can assign a reason that comes from
24 the evidence. Now, a reasonable doubt may arise
25 not only from the evidence produced, but also from

1 a lack of evidence or any part of the evidence.
2 Again, the burden is on the State to prove the
3 defendant guilty beyond a reasonable doubt of each
4 of the elements of the offense, which I'll explain
5 to you in a moment here.

6 Now, the law tells us this about the term
7 reasonable doubt. It's not just a mere possible
8 doubt. In other words, it's not a mere guess,
9 surmise, or capricious doubt. The doubt which
10 would justify an acquittal, it must be an actual
11 doubt. The reasonable doubt which entitles an
12 accused to an acquittal, it's not fanciful, vague,
13 conjectural or speculative, but it's a reasonable
14 doubt arising from the evidence and remaining after
15 a careful consideration of the testimony and
16 evidence such as men and women such as you would
17 consider under all the circumstances.

18 Now, the State is not required to convince you
19 of defendant's guilt beyond all doubt or to a
20 mathematical certainty. Again, it's simply beyond
21 a reasonable doubt. I told you earlier that you're
22 the sole judges of the evidence, and I'm going to
23 remind or explain to you again what is and what is
24 not evidence. First, as I just said, the
25 indictment here, it is not evidence. In addition,

1 the arguments, statements, assertions of the
2 attorneys, that is not evidence. Rulings made by
3 the Court during the course of the trial, that is
4 not evidence. Evidence is simply the testimony of
5 witnesses under oath from the witness stand. It's
6 any exhibits or documents that were actually
7 admitted into evidence, and it's also any
8 presumptions of law that I've given you, such as
9 the presumption of innocence.

10 I'll add, there is also what is termed
11 circumstantial evidence. And there are really two
12 kinds of evidence. It can be direct evidence or
13 indirect evidence. And indirect evidence is often
14 referred to as circumstantial evidence. Now, some
15 of the evidence in this case would be considered to
16 be circumstantial. Circumstantial evidence is
17 defined as proof positive or circumstances of fact
18 that tend to prove the existence of the facts
19 sought to be proved. It is inferences drawn from
20 the evidence and physical facts. In other words,
21 it's what, again, could be referred to as indirect
22 proof. When part or all of the evidence relied
23 upon is circumstantial, the chain of circumstances
24 must be so complete and of such a character as so
25 to convince you of defendant's guilt beyond a

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reasonable doubt. But if the circumstances permit an inference considered -- consistent with innocence, then it would not support a conviction.

Also, with regard to the evidence, there's been some testimony regarding the reliability of identification. And it's been raised as an issue in the case and it deserves your attention when evaluating the credibility of any witness testifying to the identification. And you're to consider it as you would the testimony of all the other witnesses. In addition, you're to consider whether a witness had an adequate opportunity to observe the person. You should consider the circumstances under which the person observed the person at the length of time. You can take such factors as the length of time that a person had to observe the person, the visibility, the distance, the lighting conditions. You can consider those factors. If you have a reasonable doubt as to the identity of the defendant as the person who committed the offense, then you would not be able to find the defendant guilty as charged.

Just as you're the judges of the evidence, you're also the sole and exclusive judges of the credibility of the witnesses and the weight that

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22 to find the defendant guilty as charged.

23 Just as you're the judges of the evidence,
24 you're also the sole and exclusive judges of the
25 credibility of the witnesses and the weight that

1 should be given their testimony. In passing on the
2 credibility of a witness, you have the right to
3 consider such factors as any bias, interest, or
4 prejudice that may have been exhibited to you while
5 that person was testifying. You also can consider
6 the demeanor of a witness on the witness stand.
7 That is, how did they appear to you when they were
8 testifying? You all can consider the basis for
9 their testimony. That is, how did they know the
10 facts to which they testified? Did they have an
11 opportunity to observe, hear, just how did they
12 know those facts? Furthermore, you may accept or
13 reject any part of the testimony of a witness and
14 accept only the testimony you consider worthy of
15 belief.

16 Now, in this case, the defendant has testified
17 in his own behalf, and he has a perfect right to do
18 so. And you cannot capriciously disregard his
19 testimony anymore than that of any other witness.
20 The law is that you must take his testimony in the
21 case and consider it along with all the other
22 evidence in the case. But while you are
23 considering or evaluating his testimony, you may
24 also take into consideration his interest in the
25 outcome of the case.

1 Now, there was some evidence that the
2 defendant had a prior conviction. However, you may
3 consider that only in assessing his credibility in
4 this case. You cannot assume that just because he
5 may have been convicted of a prior offense that he
6 may have committed this offense. That's not
7 permissible, as you may only consider a prior
8 conviction in evaluating credibility.

9 Now, as to this particular charge, the
10 defendant is charged with robbery in the first
11 degree. Under the law of Alabama, a person commits
12 the crime of robbery in the first degree if in the
13 course of committing a theft, he uses or threatens
14 the imminent use of force against the person of the
15 owner of the property or any person present with
16 the intent to overcome that person's physical
17 resistance or physical power of resistance, and, in
18 so doing, he is armed with a deadly weapon.

19 So, in order to convict the defendant, the
20 State would have to prove beyond a reasonable doubt
21 each of these elements of robbery in the first
22 degree. First of all, that the defendant here,
23 Charles Smith, committed or attempted to commit
24 theft -- and, here, it's theft of property. It was
25 currency -- lawful currency. Second, that in the

1 course of committing the theft, the defendant
2 either used force against a person -- and, here,
3 it's particularly charged with LaKeshia Atkins, who
4 was the manager of the establishment; that the
5 defendant either used force against her with the
6 intent to overcome her physical resistance or
7 physical power to resist or threaten imminent use
8 or force against the person or any other person
9 present with intent to compel acquiescence to the
10 taking of the property. And, third, that the
11 defendant was armed with a deadly weapon.

12 Now, the person commits the crime of theft of
13 property if he knowingly obtains or exerts
14 unauthorized control over the property of another
15 with the intent to deprive the owner of that
16 property. And a deadly weapon is a firearm or
17 anything designed or adapted for the purpose of
18 inflicting death or serious physical injury. A
19 person acts intentionally with respect to a result
20 or to conduct when its purpose is to cause that
21 result or to engage in that particular conduct. A
22 person acts knowingly with respect to conduct or to
23 a circumstance when he is aware that his conduct is
24 of that nature or that the circumstances exist.

25 Now, there's also been some evidence offered

1 that the defendant fled from the scene of the
2 crime. If you find from the evidence that the
3 defendant fled from the scene of the robbery, then
4 you may consider that evidence as attempting to
5 show his consciousness of his guilt.

6 Now, if you find, from the evidence, that the
7 State has proven beyond a reasonable doubt each of
8 the elements of the offense of robbery in the first
9 degree as charged, then you would find the
10 defendant guilty of that. On the other hand, if
11 you find that the State has failed to prove one or
12 more of the elements of the offense of robbery in
13 the first degree, then you cannot find the
14 defendant guilty as charged.

15 In a moment, you'll be beginning your
16 deliberations. In passing on the evidence, you
17 have the right to use your knowledge of people in
18 their affairs. This is the tool that is given you,
19 in which some of us simply call your common sense.

20 Also, in arriving at your verdict, you must
21 not permit sympathy, prejudice, or emotion to
22 influence you. Furthermore, you must not base your
23 verdict upon any preconceived idea of what would be
24 a popular or unpopular verdict. In other words,
25 your verdict must strictly be based on the evidence

1 presented and the law that applies.

2 Also, in order to reach a verdict, all twelve
3 of you must reach the same verdict. In other
4 words, there can be no split verdict. It must be
5 unanimous. In a moment, when you go back to the
6 jury deliberation room, one of the first things you
7 need to do is to select one person to act as your
8 foreperson or your spokesperson. Now, that person
9 will have no greater weight in your deliberations
10 than anyone else, but will simply act as your
11 foreperson.

12 You need to discuss the case, and if you have
13 any questions, there's paper and pencil back there.
14 Have the foreperson write out the question, sign
15 it, and then, if it's a question of law, I will
16 answer it. However, if it's a question of fact, I
17 cannot assist you, as you're the sole and exclusive
18 judges of the facts. Once you've reached a
19 verdict, have the foreperson sign the verdict form
20 and -- there are two doors -- and there's really
21 another door, I'll ask you to knock on if you have
22 any questions or want to take a break or anything,
23 because we'll be doing some other things in the
24 courtroom.

25 But once you've reached a verdict, let us

1 know, and you'll be brought back into the
2 courtroom, and it will be read in open court. The
3 verdict form, as well as the exhibits will go back
4 with you to the deliberation room. Now, with
5 regard to the verdict form, you have a choice --
6 and there's a place -- it's really
7 self-explanatory. It's, we, the jury, find the
8 defendant guilty of robbery in the first degree as
9 charged in the indictment. Or we, the jury, find
10 the defendant not guilty.

11 The attorneys are real good about letting me
12 know if I've misstated something or need to charge
13 you further on anything. What says the State?

14 MR. POWELL: State satisfied, Your
15 Honor.

16 MR. DURANT: Satisfied.

17 THE COURT: I'm going to have you --
18 the law clerk take you back to the deliberation
19 room. You are in charge of your own time now. If
20 you want to take a break, you can do so. And you
21 have your own thermostat back there. Sometimes
22 it's too hot or too cold in the courtroom. But the
23 verdict form will go back with you -- and it might
24 take a few minutes -- not that long -- to get the
25 exhibits to also take back with you. And there are

1 two restrooms back there, and he'll show you the
2 other door if you need anything or have a question
3 or have a verdict to knock on.

4 (Jurors deliberating.)

5 (In the presence of jury.)

6 **THE COURT:** I understand you have
7 reached a verdict. Does the foreperson want to
8 read the verdict?

9 **THE JUROR:** We, the jury, find the
10 defendant guilty of robbery in the first degree as
11 charged in the indictment.

12 **THE COURT:** Okay. Do you want the
13 jury poled?

14 **MR. DURANT:** Yes.

15 **THE COURT:** I'm going to ask each of
16 you the same question, if you'll just answer. Is
17 this your verdict?

18 **THE JUROR:** Yes.

19 **THE JUROR:** Yes.

20 **THE JUROR:** Yes.

21 **THE JUROR:** Yes.

22 **THE JUROR:** Yes.

23 **THE JUROR:** Yes.

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25 **THE JUROR:** Yes.

1 THE JUROR: Yes.

2 THE JUROR: Yes.

3 THE JUROR: Yes.

4 THE JUROR: Yes, ma'am.

5 THE COURT: And let the Record show
6 that all the jurors showed it was their verdict.
7 And, in accordance with the verdict, the Court will
8 adjudicate the defendant guilty as charged. And
9 we'll address sentencing in just a moment.

10 On behalf of everyone, I want to tell you how
11 much we appreciate you serving. I hope this will
12 be a good week for you and that you make some
13 friends along the way. The good news is that
14 you're excused the rest of the day. But if you'll
15 call code-a-phone tomorrow, they'll let you know
16 what to do about tomorrow. But you're excused at
17 this time.

18 (Out of the presence of the jury.)

19 THE COURT: I'm going to set
20 sentencing for November 12th.

21 MR. POWELL: Your Honr, at this
22 time, the State puts the defendant on notice of one
23 prior and moves to invoke the gun enhancement as
24 well.

25 THE COURT: Yes.

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25 THE COURT: Yes.

1 (End of trial proceedings.)

2 (Tuesday, November 12, 2002.)

3 **THE COURT:** Charles Smith.

4 Mr. Smith, you're here today for sentencing. And
5 the State had given notice of both, the weapon
6 enhancement and I think one prior; was that
7 correct?

8 **MR. POWELL:** Correct, Your Honor.

9 **THE COURT:** So, is there anything
10 you want to say before the Court pronounces
11 sentence?

12 **THE DEFENDANT:** No, ma'am.

13 **THE COURT:** What was the prior?

14 **MR. POWELL:** Robbery in the first
15 degree, Judge, from Birmingham.

16 **MR. DURANT:** Judge, it's been --
17 Judge, I think that was ten years ago. It's been
18 quiet some time. I'll ask the Court to -- I'll ask
19 the Court to follow the recommendation --

20 **THE COURT:** Well, I heard the
21 evidence in this case, and -- not -- and, although,
22 there was only one victim named in the indictment.
23 In my opinion, there were three victims --

24 **MR. POWELL:** Yes, Judge.

25 **THE COURT:** -- and it was a serious

1 situation. At this time -- let me see. Where --
2 did you bring --

3 MS. STRICKLAND: No, ma'am, it
4 wasn't there. I had put it on your desk.

5 MR. JOHNSON: Would you like to look
6 at mine?

7 THE COURT: Yeah, let me just
8 look -- I needed to look at one thing.

9 I'm going to sentence you to --

10 Do you have your prior?

11 MR. POWELL: Yes, Your Honor. But
12 this is what we have. We were unable to, I
13 believe, get a prior certified from the clerk's
14 office in Birmingham. But we're able to get this
15 document pursuant to DOC.

16 I'll show that to Mr. Durant.

17 THE COURT: Is it certified?

18 MR. POWELL: It is certified, Judge.
19 But regardless, a weapon enhancement is going to
20 trump the Habitual Felony Offender Act in this
21 case. We're looking at a range of twenty to life,
22 so that's --

23 THE COURT: Well, I'm going to
24 sentence you to twenty years. Order DOC to give
25 sixty-day notice prior to any EOS.

1 Is there restitution?

2 MR. POWELL: Your Honor, we're
3 showing restitution for missed work for one of the
4 employees in the amount of sixty-two dollars and
5 ninety-six cents. But we would -- I believe all
6 the money was recovered. If you remember, most of
7 the bank bags were recovered. But if you would
8 leave it open and let me double check with Arby's
9 and make sure.

10 THE COURT: And I'll need to know
11 what -- who the -- who it goes to.

12 MR. POWELL: Shontrice Roberson.

13 THE COURT: Shawn Roberson?

14 MR. POWELL: Shontrice.

15 THE COURT: Okay.

16 MR. POWELL: S-h-o-n-t-r-i-c-e.

17 Roberson, Shontrice.

18 THE COURT: I didn't quiet spell it
19 right on here.

20 Fifty dollars Crime Victim, court costs,
21 two-hundred dollars attorney's fees. I am going to
22 impose a fine of two-thousand dollars, order one
23 half of any monies earned paid toward your
24 court-ordered monies.

25 You do have a right to appeal. If you cannot

1 afford a transcript or an attorney, that can be
2 provided for you.

3 In addition, you'll be given credit for any
4 time actually served as allowed by law. Okay.

5 MR. DURANT: Judge, I think --
6 Mr. Smith wants to appeal, he says.

7 THE COURT: Well, I just -- are you
8 giving oral notice of appeal?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. This one needs to
11 be done over. It's -- okay. That's all.

12 (Court adjourned.)
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16 END OF PROCEEDINGS

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REPORTER'S CERTIFICATE

STATE OF ALABAMA

TALLAPOOSA COUNTY

I, Meridith Newman, Court Reporter and
Commissioner for the State of Alabama at Large,
hereby certify that on Monday, October 28 and
Tuesday, November 12, 2002, I reported the
TESTIMONY AND PROCEEDINGS in the matter of the
foregoing cause, and that the foregoing pages
contain a true and accurate transcription of said
proceedings.

I further certify that I am neither of kin nor
of counsel to any of the parties to said cause, nor
in any manner interested in the results thereof.

This 23rd day of January, 2003.



Meridith Newman, Court Reporter
Commissioner for the State of
Alabama at Large

MY COMMISSION EXPIRES: 12/30/2005